

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:06  
PLR-124552-11

Date:  
August 02, 2011

## Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Year 1 =

State A =

Date 3 =

Business A =

Accounting Firm =

Year 2 =

Date 4 =

Dear \_\_\_\_\_ :

This letter responds to your request for rulings dated June 3, 2011 submitted by your authorized representative, requesting that the Commissioner make a determination, under Treas. Reg. §1.1502-75(b)(2), that Sub 1, Sub 2, and Sub 3 have joined in the making of an initial consolidated return filed by Parent for the taxable period beginning on Date 1 and ending on Date 2 (the "Year 1 Tax Period"). Additional information was submitted in a letter dated July 21, 2011. The information is summarized below.

### Summary of Facts

Parent is a State A corporation incorporated on Date 3. Shortly after its formation, Parent acquired all of the outstanding stock of Sub 1 from an unrelated party in a taxable transaction. Prior to such acquisition, Sub 1 was the common parent of an affiliated group of corporations that joined in the filing of a consolidated federal income tax return, which affiliated group consisted of Sub 1, Sub 2, and Sub 3.

Parent, Sub 1, and Sub 2 are holding companies doing business through Sub 3 which engages in Business A. Sub 3 is a wholly-owned subsidiary of Sub 2, which is a wholly-owned subsidiary of Sub 1, which is a wholly-owned subsidiary of Parent (Parent, Sub 1, Sub 2, and Sub 3 are collectively "Parent and the Subsidiaries" or "taxpayer").

Parent retained Accounting Firm to provide audit and tax services to Parent and the Subsidiaries. In connection with the preparation of the federal income tax return for the Year 1 Tax Period, Accounting Firm advised Parent and the Subsidiaries to file such tax return on a consolidated basis, because filing on such basis would allow Parent and the Subsidiaries to achieve significant tax compliance efficiencies as well as properly reflect the combined business operations of all companies. Parent directed Accounting Firm to prepare the federal income tax return on a consolidated basis.

Accounting Firm prepared Parent's federal income tax return for the Year 1 Tax Period. Such tax return included all income and deductions of the Parent and the Subsidiaries, as well as a Form 851 (Affiliations Schedule) identifying and including Sub 2 and Sub 3 but failed to include Sub 1. Additionally, Accounting Firm failed to prepare and file any Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in Consolidated Income Tax Return).

### Representations

The taxpayer has made the following representations:

1. For the Year 1 Tax Period and all subsequent taxable years ending on or prior to Date 4, including the taxable year ending Date 4, the taxable year in which Parent and the Subsidiaries were sold to an unrelated party, Parent and the

Subsidiaries have reported (and will report) all of their income and deductions on timely-filed consolidated federal income tax returns.

2. Except for the failure to file Forms 1122 with the consolidated federal income tax return that Parent and the Subsidiaries filed for the Year 1 Tax Period, Parent and the Subsidiaries were eligible to file a consolidated federal income tax return for the Year 1 Tax Period.
3. None of the Subsidiaries filed (or will file) separate federal income tax returns for the Year 1 Tax Period, or for any subsequent taxable year ending on or prior to Date 4, including the taxable year ending Date 4, the taxable year in which Parent and the Subsidiaries were sold to an unrelated party.
4. Except for Sub 1 not being included in the affiliations schedule, Form 851, attached to the consolidated federal income tax return filed for the Year 1 Tax Period, each of the Subsidiaries was included (and for future filings will be included) on the Forms 851 attached to the consolidated federal income tax returns for the Year 1 Tax Period and for subsequent taxable years ending on or prior to Date 4, including the taxable year ending Date 4, the taxable year in which Parent and the Subsidiaries were sold to an unrelated party.
5. As of the date the taxpayer submitted its ruling request, the Service had not contacted Parent or any of the Subsidiaries concerning the failure to file any Forms 1122 with the consolidated federal income tax return for the Year 1 Tax Period or for any subsequent taxable year, nor has the Service notified Parent or any of the Subsidiaries that Sub 1 was not included on the Form 851 filed for the Year 1 Tax Period.

#### Applicable Law

Treas. Reg. §1.1502-75(a)(1) provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with Treas. Reg. §1.1502-75(b).

Treas. Reg. §1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, Treas. Reg. §1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for

such year and that a corporation shall be deemed to have joined in the making of such return for such year, if it files a Form 1122 in the manner specified in Treas. Reg. §1.1502-75(h)(2).

Treas. Reg. §1.1502-75(h)(2) provides that if, under the provisions of Treas. Reg. §1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a Form 1122 shall not be required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. §1.1502-75(b)(2) of the regulations provides that if a member of the group fails to file the Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors, among others, that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of each member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by any member for that taxable year; and (iii) Whether or not the member of the group was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated for purposes of Treas. Reg. §1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

### Ruling

Based solely on the information submitted and the representations made, this office rules that, pursuant to Treasury Regulation §1.1502-75(b)(2), each of Sub 1, Sub 2, and Sub 3 is treated under Treasury Regulation §1.1502-75(h)(2) as if it had filed a Form 1122 with the consolidated return of the Parent consolidated group for the taxable year beginning on Date 1 and ending on Date 2. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in § 1501 of the Internal Revenue Code, each of Sub 1, Sub 2, and Sub 3 is determined to have consented to all consolidated return regulations prescribed under § 1502 prior to the last day prescribed by law for the filing of such return.

### Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

#### Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Bruce A. Decker  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Corporate)

cc: